



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R5-ES-2012-0032]

[FXES111505000000Z-123-FF05E00000]

Draft Environmental Assessment, Habitat Conservation Plan, and Application for an Incidental Take Permit for Indiana Bat, Criterion Power Partners, LLC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Criterion Power Partners, LLC (CPP) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA). We are considering issuing a 21-year permit to the applicant that would authorize take of the federally endangered Indiana bat incidental to otherwise lawful activities associated with operation, maintenance, and decommissioning of a 28-turbine wind farm. Pursuant to the

ESA and the National Environmental Policy Act, we announce the availability of CPP's incidental take permit application and draft habitat conservation plan, as well as the Service's draft environmental assessment (EA), for public review and comment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see ADDRESSES section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: Written comments may be submitted electronically via the Federal eRulemaking Portal: <http://www.regulations.gov> or by hard copy to: Public Comments Processing, Attn: FWS-R5-ES-2012-0032; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203. The docket number for this notice is FWS-R5-ES-2012-0032.

FOR FURTHER INFORMATION CONTACT: Julie Slacum, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD, (410) 573-4595.

SUPPLEMENTARY INFORMATION: We received an application from CPP for an incidental take permit to take the federally endangered Indiana bat (*Myotis sodalis*) over

21 years during operations, maintenance, and decommissioning activities related to CPP's 28-turbine wind farm. A conservation program to minimize and mitigate for the impacts of the incidental take would be implemented by CPP as described in the draft Criterion Wind Indiana Bat Habitat Conservation Plan (HCP).

To comply with the National Environmental Policy Act (42 U.S.C. 4321 et seq.; NEPA), we prepared a draft EA that describes the proposed action and possible alternatives and analyzes the effects of alternatives on the human environment. The Service will evaluate whether the proposed action, issuance of an incidental take permit to CPP, and analyses in this draft EA are adequate to support a Finding of No Significant Impact.

Availability of Documents

You may obtain copies of the proposed HCP and draft EA on the internet at the Chesapeake Bay Field Office's Web site at: <http://www.fws.gov/chesapeakebay/> or at <http://www.regulations.gov> at Docket Number FWS-R5-ES-2012-0032. Copies of the proposed HCP and draft EA will also be available for public review during regular business hours at the Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD. Those who do not have access to the internet or cannot visit our office can request copies by telephone at (410) 573-4599, or by letter to the Chesapeake Bay Field Office.

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct” (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

CPP is seeking a permit for the incidental take of Indiana bat for a term of 21 years. Incidental take of this species may occur due to operation, maintenance, and decommissioning of 28 wind turbines. The proposed conservation strategy in the applicant’s proposed HCP is designed to avoid, minimize, and mitigate the impacts of covered activities on the covered species. The biological goals and objectives are to minimize potential take of Indiana bats through onsite minimization measures and to provide habitat conservation measures for Indiana bats to offset any unavoidable impacts to the species during operations of the project.

The HCP provides onsite avoidance and minimization measures, which include turbine operational adjustments, project maintenance procedures, and decommissioning measures. The estimated level of Indiana bat take from the project is 14 Indiana bats over the 21-year project duration. In order to provide maximum conservation benefit to

the Indiana bat, CPP will provide funding for an offsite Indiana bat habitat conservation project designed to mitigate the impacts of the incidental take of Indiana bat. CPP intends to provide funding for implementation of a hibernacula acquisition or gating project within the Appalachian Mountain Recovery Unit.

The proposed action consists of the issuance of an incidental take permit and implementation of the proposed HCP. CPP considered two alternatives to the proposed action in its HCP: no action (i.e., operation of the project without an incidental take permit and without onsite or offsite avoidance, minimization, or mitigation of Indiana bat impacts); and operation of the project with an incidental take permit with complete onsite operational curtailment to avoid or minimize Indiana bat impacts only, and no offsite recovery-plan-based mitigation measures. CPP has also negotiated a draft implementation agreement (IA) with the Service that ensures proper implementation of each of the terms and conditions of the HCP and describes the applicable remedies and recourse should any party fail to perform its obligations, responsibilities, and tasks, as set forth in the agreement. The draft IA is being included with the proposed HCP for public review.

National Environmental Policy Act

In compliance with the NEPA, we analyzed the impacts of implementing the HCP, issuance of the permit, and a reasonable range of alternatives. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there are any significant impacts or effects caused by issuing the incidental take permit. We have prepared a draft EA on this proposed action and have

made it available for public inspection online or in person at the Chesapeake Bay Field Office (see Availability of Documents).

NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EA analyzes four alternatives that were derived from discussions with CPP during the development of the HCP. We evaluated a no action alternative (do not issue a permit, status quo), the proposed action (issue the permit and implement the HCP), a full minimization alternative (no need for a permit), and a reduced permit duration alternative.

Next Steps

We will evaluate the plan and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

Public Comments

The Service invites the public to comment on the proposed HCP and draft EA during a 60-day public comment period (see DATES). You may submit written comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS-R5-ES-2012-0032, which is the docket number for this notice. Then, on the left side of the screen, under the Document Type heading, click on the Notices link to locate this document and submit a comment.

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R5-ES-2012-0032; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will post all public comments and information received electronically or via hardcopy on <http://www.regulations.gov>. All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment -- including your personal identifying information -- will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Date: July 12, 2012

/s/ Deborah Rocque

Deborah Rocque, Acting Regional Director, Northeast Region

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